

UTAH EDUCATION NETWORK AMENDMENTS

2002 GENERAL SESSION

STATE OF UTAH

Sponsor: Thomas V. Hatch

This act modifies provisions related to the State System of Higher Education by requiring any telecommunications services distribution facility owned by the Utah Education Network (UEN) to be used exclusively for the support of public or higher education and prohibiting UEN from building or acquiring any facilities for the delivery of telecommunications services if comparable facilities and services can be provided by a privately owned telecommunications corporation at comparable costs. This act requires the UEN steering committee to include three representatives of private industry and clarifies that a school district may acquire telecommunications services from a privately owned telecommunications corporation irrespective of services provided by UEN.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:

53B-17-102, as last amended by Chapter 243, Laws of Utah 1996

53B-17-104, as enacted by Chapter 33, Laws of Utah 1995

ENACTS:

53B-17-101.5, Utah Code Annotated 1953

53B-17-105, Utah Code Annotated 1953

Be it enacted by the Legislature of the state of Utah:

Section 1. Section **53B-17-101.5** is enacted to read:

53B-17-101.5. Definitions.

As used in this part:

(1) "Telecommunications corporation" has the meaning defined in Section 54-8b-2.

(2) "Privately owned telecommunications corporation" means a telecommunications corporation that is not owned by a governmental entity, political subdivision, or



28 quasi-governmental entity.

29 Section 2. Section **53B-17-102** is amended to read:

30 **53B-17-102. Utah Education Network.**

31 (1) The Utah Education Network, hereafter referred to as UEN, is a consortium and
32 partnership between public and higher education established to:

33 (a) coordinate and support the telecommunications needs of public and higher education;
34 and

35 (b) coordinate the various telecommunications technology initiatives of public and higher
36 education.

37 (2) The University of Utah shall provide administrative management for UEN.

38 (3) (a) The governor shall appoint a statewide steering committee of representatives from
39 public and higher education, state government, and private industry to advise UEN in the
40 development and operation of a coordinated, statewide, multi-option telecommunications system
41 to assist in the delivery of educational services throughout the state.

42 (b) The membership of the steering committee shall include at least three representatives
43 of the private telecommunications industry.

44 (4) (a) Except as required by Subsection (4)(b), members shall be appointed to four-year
45 terms.

46 (b) Notwithstanding the requirements of Subsection (4)(a), the governor shall, at the time
47 of appointment or reappointment, adjust the length of terms to ensure that the terms of committee
48 members are staggered so that approximately half of the committee is appointed every two years.

49 (c) When a vacancy occurs in the membership for any reason, the replacement shall be
50 appointed for the unexpired term.

51 (i) (A) Members who are not government employees shall receive no compensation or
52 benefits for their services, but may receive per diem and expenses incurred in the performance of
53 the member's official duties at the rates established by the Division of Finance under Sections
54 63A-3-106 and 63A-3-107.

55 (B) Members may decline to receive per diem and expenses for their service.

56 (ii) (A) State government officer and employee members who do not receive salary, per
57 diem, or expenses from their agency for their service may receive per diem and expenses incurred
58 in the performance of their official duties from the committee at the rates established by the

Division of Finance under Sections 63A-3-106 and 63A-3-107.

(B) State government officer and employee members may decline to receive per diem and expenses for their service.

(d) (i) Higher education members who do not receive salary, per diem, or expenses from the entity that they represent for their service may receive per diem and expenses incurred in the performance of their official duties from the committee at the rates established by the Division of Finance under Sections 63A-3-106 and 63A-3-107.

(ii) Higher education members may decline to receive per diem and expenses for their service.

(5) (a) UEN shall locate EDNET receive and transmit sites and UtahLink data connection sites at various institutions and public schools throughout the state.

(b) The institutions and other identified public education sites at which hub sites are located shall manage site operations under policy established by UEN.

(6) (a) The Legislature shall provide an annual appropriation to UEN to pay for ongoing maintenance and operation costs of EDNET sites serving the state's public education system.

(b) The Legislature shall provide an annual appropriation to fund the ongoing line-costs, maintenance, and operation of the UtahLink sites serving the state's public and higher education systems.

Section 3. Section **53B-17-104** is amended to read:

53B-17-104. Responsibilities of UEN related to telecommunications for education.

(1) Subject to Section 53B-17-105 and applicable rules of the Federal Communications Commission, the State Board of Regents, the State Board of Education, and the University of Utah, UEN shall:

(a) coordinate statewide services of public radio and television;

(b) (i) develop, maintain, and operate statewide distribution systems;

(A) for KUED, KUER, KULC, EDNET, and UtahLink including radio and television translator systems, an educational microwave distribution system, a data network, and other telecommunications services distribution systems appropriate for providing video, audio, and data telecommunication services;

(B) in support of public and higher education; and

(C) to as many communities as may be economically and technically feasible and lawfully

permissible under the various operating licenses[;]; and[;]

(ii) in conjunction with these operations[;];

(A) cooperate with state and local governmental and educational agencies; and

(B) provide leadership and consulting service in regards to signal distribution;

(c) represent the state with privately owned telecommunications systems to gain access to their networks for the delivery of programs and services sponsored or produced by public and higher education;

(d) acquire, produce, coordinate, and distribute a variety of programs and services of an educational, cultural, informative, and entertaining nature designed to promote the public interest and welfare of the state;

(e) coordinate with the state system of higher education to acquire, produce, and distribute broadcast and nonbroadcast college credit telecourses, teleconferences, and other instructional and training services;

(f) coordinate with the State Office of Education and school districts to acquire, produce, and distribute broadcast and nonbroadcast telecourses, teleconferences, and other instructional and training services to the public schools;

(g) act as a clearing house for the materials, courses, publications, media, software, and other applicable information related to the items addressed in Subsections (1)(e) and (f);

(h) coordinate with the State Office of Education to assist in providing the public schools of Utah with the following services:

(i) broadcast during school hours of educational and administrative programs approved and scheduled by the State Board of Education;

(ii) studio production and technical assistance for the creation of educational programs;

(iii) duplication of program masters for broadcast purposes;

(iv) nonstudio production services for the compilation of various production elements into completed programs;

(v) program previewing; and

(vi) shared responsibility with the Utah State Office of Education for ITV awareness and utilization;

(i) cooperate with state and local governmental agencies to provide teleconference and training services;

(j) consult with the steering committee authorized in Section 53B-17-102 and other technology coordinating committees established by the State Board of Education and State Board of Regents in acquiring, producing, and distributing instructional services on all media, and with public advisory committees in acquiring, producing, and distributing public radio and television programs on KUER and KUED;

(k) coordinate the statewide development and implementation of the electronic highway for education, which shall include video, audio, and data interconnections utilizing satellite, microwave, fiber-optic, and other transmission media;

(l) coordinate through the UEN steering committee the technology initiatives for public and higher education which are under the direction of the State Office of Education and the Office of the Commissioner of Higher Education;

(m) coordinate through the UEN steering committee, public education's Educational Technology Initiative authorized under Title 53A, Chapter 1, Part 7, Educational Technology Programs;

(n) utilize statewide economic development criteria in the design and implementation of the educational telecommunications infrastructure; and

(o) assure that public service entities such as educators, public service providers, and public broadcasters are granted access to the telecommunications infrastructures that are developed in the state.

(2) This section neither regulates nor restricts a privately owned company in the distribution or dissemination of education programs.

(3) A school district may obtain telecommunications services from a privately owned telecommunications corporation irrespective of the services provided by UEN.

Section 4. Section **53B-17-105** is enacted to read:

53B-17-105. Telecommunications services distribution system owned by UEN -- Use restricted to support public or higher education -- Cost analysis.

(1) Any data network or other telecommunications services distribution facilities owned by UEN shall be used exclusively for the support of public or higher education.

(2) Before UEN builds or acquires its own telecommunications facilities, it shall first attempt to acquire the facilities through a lease or other arrangement from a privately owned telecommunications corporation if the facilities, or reasonable substitutes for them, are available

and can be obtained, or can reasonably be made available and obtained, at costs comparable to those which UEN would incur in building, operating, and maintaining its own facilities.

(3) Before building or acquiring its own telecommunications facilities, UEN shall conduct a feasibility study, through an independent third party, including a five-year analysis of the total expenditures necessary for UEN to build, acquire, operate, and maintain its own facilities. The feasibility study shall, at a minimum, consider:

(a) whether or not the building of telecommunications facilities by UEN will duplicate facilities, or reasonable substitutes for them, which are already available or may reasonably be made available from a privately owned telecommunications corporation;

(b) the cost to lease or obtain the facilities from a privately owned telecommunications corporation;

(c) the capital investment to build the facilities;

(d) a full-cost accounting, based on the five-year analysis, of UEN's projected expenditures to build, acquire, operate, and maintain its own facilities; and

(e) whether the expenditures referred to in Subsection (3)(d) will be more than those required if UEN were to lease or enter into a similar arrangement for the facilities from a privately owned telecommunications corporation.

(4) (a) If the results of the feasibility study indicate that UEN can build, operate, and maintain facilities more economically than by leasing or acquiring the facilities from a privately owned telecommunications corporation, UEN may elect to build its own telecommunications facilities.

(b) If the results of the feasibility study do not indicate that UEN can build, operate, and maintain facilities more economically than by leasing or acquiring the facilities from a privately owned telecommunications corporation, UEN shall obtain telecommunications facilities from a privately owned telecommunications corporation.

(5) The results of the feasibility study shall be available for public inspection.

(6) (a) If as a result of the feasibility study, UEN elects to build its own facilities, it shall provide notification of its decision to each privately owned telecommunications corporation holding a certificate issued under Title 54, Public Utilities, to provide telecommunications services in the area to be served by the UEN-owned facilities.

(b) Any privately owned telecommunications corporation that disagrees with a decision

183 of UEN to build its own facilities may request a review of the decision as provided in Title 63,
184 Chapter 46b, Administrative Procedures Act.
185 (7) This section does not apply to any contract for the acquisition of telecommunications
186 facilities entered into by UEN before the effective date of this section.

Legislative Review Note
as of 1-22-02 1:58 PM

A limited legal review of this legislation raises no obvious constitutional or statutory concerns.

Office of Legislative Research and General Counsel